

REMARKS

Claims 1-27 are pending. Claims 4 and 23 have been amended as set forth below. Claim 23 has been additionally amended and claim 1 amended to recite that the circumferential ring is below the upper bumper transition as supported by, for example, the drawings. Applicants note that claim 24 requires the circumferential ring to be within the label mounting region and thus below the upper bumper transition.

The Office Action rejects claims 4, 5, 14 and 23 under 35 U.S.C. § 112, second paragraph as indefinite. In view of the amendments to the claims and remarks below, applicants request reconsideration.

Claims 4 and 14 are rejected as having insufficient antecedent basis for “said vacuum panels.” Claim 4 has been amended to recite the presence of vacuum panels in the vacuum panel region. Claims 5 and 14 depend, directly or indirectly, from claim 4. Accordingly, proper antecedent basis exists and the rejection should be withdrawn.

Claim 23 is rejected, alleging that it is unclear what is meant by “said lower bumper transition is linearly tapered from said bumper transition is linearly tapered between said label mounting region and said base.” Claim 23 has been amended to clarify this phrase as supported by the specification and figures as originally filed. Accordingly, reconsideration is respectfully requested.

The Office Action rejects claims 1-27 under 35 U.S.C. § 103(a) as obvious over Ota ‘086, either alone or in combination with other references as set forth in the Office Action and repeated below. Applicants note that the Office Action refers to an “Ota ‘096” reference. However, there is no such reference of record. Accordingly, Applicants have responded as though this were meant to cite Ota ‘086. In view of the remarks that follow, applicants respectfully traverse the rejections and request reconsideration.

As set forth in the background of the invention and as is well known in the art, hot filled plastic containers undergo a variety of stresses during filling, processing and storage. Among those stresses are dome region ovalization and top loading capacity. Dome region ovalization is caused by the partial vacuum created as the hot contents of the filled and capped package cool. It is known in the art that stiffening of the dome, and hence reduction of ovalization in the dome region and improvement in top load capacity, can be achieved by the use of one or more

circumferential rings in the dome region. In order to achieve this stiffening function, however, the ring is required to have a relatively tight, i.e. small, radius and an angular extent that is generally less than 90°. Furthermore, the ring is present in the dome region above the upper label bumper. (In the present application, the upper label bumper is between the upper bumper transition 310 and lower bell 328. In the references, the upper label bumper is: region “E” in FIG. 6 of Ota ‘086; reference number 36 in Peek ‘125; reference number 22 in Tobias ‘221; reference number 16 in Ogg ‘433; and reference number 20 in Krishnakumar ‘834.) The necessary dimensional or geometric characteristics are set forth in, for example, Krishnakumar ‘834, cited in the specification of the present application. Ota ‘086, Peek ‘125, and Krishnakumar ‘834, cited by the Examiner, have a circumferential ring with the geometry and position previously utilized in the art. (See Ota ‘086, reference number 6; Peek ‘125, reference number 34; and Krishnakumar ‘834, reference number 18.) That is, there is a circumferential ring of tight or small, radius with an angular extent that is generally less than 90° positioned above the upper label bumper.

Alternatives to the use of a circumferential ring exist, as shown in Tobias ‘221 and Ogg ‘433. For example, Tobias utilizes a series of vertically-oriented stiffening structures to improve top loading capability and control dome distortion. (See, for example, Tobias ‘221 col. 4, lines 19-43.) Ogg utilizes several features to control distortion. Ogg incorporates a more traditional ring around a portion of the container (see Fig. 2, reference number 21), and also uses a geometry that allows flexing in order to control distortion of the container. (See Fig. 5 and col. 5 lines 4-14.) Ogg also utilizes a number of hinges, webs and ribs to allow movement and prevent distortion, as is discussed throughout the specification.

In contrast to the teachings of the prior art, the presently claimed invention achieves improved top load performance in a structurally different way. The present invention achieves top load performance and resistance to ovalization by using a conventional style circumferential ring in the label panel area below the upper label bumper in combination with a broadly arcing and angularly “open” peripheral waist in a cylindrical dome. For the reasons set forth more fully below, the present invention is not obvious in view of the prior art and, in particular, the references identified by the Examiner.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the

knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claims 1, 4-6, 13, 15 and 19-22 are rejected as obvious over Ota '086. Applicants respectfully traverse. In order to make an invention obvious, a reference must teach or suggest all the claim limitations. Ota does not teach or suggest all of the limitations of claim 1. At least missing from Ota is the presence of a circumferential ring below the upper bumper transition. In contrast, as discussed above, Ota discloses a conventional container design having a circumferential ring above the upper bumper panel, i.e. within the dome area of the container. Ota teaches the presence of the circumferential ring (referred to as waist rib 6) between the upper barrel portion and lower barrel portion. The upper barrel portion has a smooth curved shape between the mouth and the waist rib. (Col. 4, lines 10-12.) Thus, the upper label bumper can not be in this area. Further, Ota teaches that the "panel portion 1a has no irregularity at all," which precludes the presence of a circumferential ring in this area. (Col. 5, lines 24-25.)

Establishing a *prima facie* case for obviousness requires that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. The Office Action presents no reasoning as to how Ota suggests the missing limitations identified above or why a person skilled in the art would be motivated to modify Ota and arrive at the present invention.

For at least these reasons, the Office Action fails to establish *prima facie* obviousness and the rejection of claims 1, 4-6, 13, 15 and 19-22 as obvious in view of Ota '086 must be withdrawn.

Claims 1, 2, 4-12, 16, 17 and 19-22 stand rejected under 35 U.S.C. § 103(a) as obvious over Peek '125 in view of Ota '096 [sic, treated as '086]. Applicants respectfully traverse.

Establishing a *prima facie* case for obviousness requires that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. The Office Action states that "[t]o have made the recess of Peek 91 degrees or greater

than 90 degrees would have been obvious of view of Ota et al. at B.” This reasoning is not sufficient and is contrary to the art. As described above, Peek uses a conventional design having a circumferential ring above the upper label bumper. Absent some other structural feature, such as those in Tobias or Ogg, for example, a person skilled in the art would not be motivated to increase the angle of the recess of Peek to achieve a peripheral waist having an angular extent of greater than about 90°. This is further evident from the disclosure of Peek itself. For example, Peek teaches other embodiments where the indented ring 66 is in various locations: in the embodiment of FIGS. 1 and 2, the indented ring 66 is positioned above the vacuum panels; in the embodiment of FIG. 7, the indented ring 166 is positioned below the vacuum panels; and in the embodiment of FIG. 8, there are indented rings 266 positioned both above and below the vacuum panels. All of these embodiments also include the indentation 34 above the label bumper and with a conventional geometry, i.e. small tight radius. A person skilled in the art would not be motivated to alter the geometry of the indentation 34, even in view of Ota. (Applicants again note that the waist rib of Ota is located above the label bumper panel.) Accordingly, there is no motivation to modify Peek with the disclosure of Ota, and the rejections should be withdrawn.

Applicants further note that establishing a *prima facie* case of obviousness requires that there must be a reasonable expectation of success if the proposed combination or modification were made. In the present case, however, there is no such reasonable expectation that the modification would be successful. As stated above, the prior art teaches that prevention of ovalization and satisfactory top load capacity in a hot-fill container is established, in part, by the presence of a tight circumferential ring above the upper label bumper. Modifying the disclosure of Peek by widening the recess above the upper label bumper is contrary to this teaching in the art. Thus, making the modification suggested by the Office Action would not reasonably be expected to be successful. For this reason as well, the rejections should be withdrawn.

For at least the reasons set forth above, the Office Action fails to establish a *prima facie* case of obviousness over Peek in view of Ota. Accordingly, the rejection of claims 1, 2, 4-12, 16, 17 and 19-22 as obvious under 35 U.S.C. § 103(a) over Peek in view of Ota must be withdrawn.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as obvious over Peek in view of Ota and in further view of Tobias ‘221. For the reasons set forth above with respect to claims 1, 2, 4-12, 16, 17 and 19-22, and for the reasons set forth below, Applicants respectfully traverse.

First, Tobias does nothing to supply the missing motivation or the lack of expectation of success identified above with respect to claim 1, from which claim 3 depends. Second, there is no motivation to combine the teachings of Tobias with the teaching of Peek or Ota. Tobias is directed to a container having series of vertically-oriented stiffening structures in the bell to improve top loading capability and control dome distortion. This is fundamentally different than anything in the disclosure of Peek and Ota. Thus, there would be no motivation to combine this reference with Peek and Ota. For at least these reasons, the Office Action fails to establish a *prima facie* case of obviousness over Peek in view of Ota and in further view of Tobias. Accordingly, the rejection of claim 3 as obvious under 35 U.S.C. § 103(a) over Peek in view of Ota and in further view of Tobias must be withdrawn.

Claims 13-15 and 27 stand rejected under 35 U.S.C. § 103(a) as obvious over Peek in view of Ota and in further view of Ogg '433. For the reasons set forth above with respect to claims 1, 2, 4-12, 16, 17 and 19-22, and for the reasons set forth below, Applicants respectfully traverse.

First, Ogg does nothing to supply the missing motivation or the lack of expectation of success identified above. Second, there is no motivation to combine the teachings of Ogg with the teaching of Peek or Ota. Ogg incorporates a more traditional ring around a portion of the container (see Fig. 2, reference number 21), and also uses geometry to control distortion of the container. (See Fig. 5 and col. 5 lines 4-14.) Ogg also utilizes a number of hinges, webs and ribs to prevent distortion. This is fundamentally different than anything in the disclosure of Peek and Ota. Thus, there would be no motivation to combine this reference with Peek and Ota.

Furthermore, Ogg does not have a bell with a cross sectional shape that is substantially the same throughout. The bell or dome in Ogg varies in shape throughout its extent. (See Figs 4-8.) For these reasons as well, there would be no motivation to combine the teachings of Ogg with the teachings of Peek and Ota. The present invention can not be *prima facie* obvious absent such motivation. Furthermore, the Office Action does not present any reasoning as to why a person skilled in the art would be motivated to modify the teachings of Ota to arrive at the present invention.

For at least these reasons, the Office Action fails to establish a *prima facie* case of obviousness over Peek in view of Ota and in further view of Ogg. Accordingly, the rejection of

claims 13-15 and 27 as obvious under 35 U.S.C. § 103(a) over Peek in view of Ota and in further view of Ogg must be withdrawn.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as obvious over Peek in view of Ota and in further view of Krishnakumar '834. For the reasons set forth above with respect to claims 1, 2, 4-12, 16, 17 and 19-22, and for the reasons set forth below, Applicants respectfully traverse.

Krishnakumar adds nothing to the disclosure of Ota and Peek to supply the missing motivation or the lack of expectation of success identified above. In particular, Krishnakumar does not disclose the presence of a circumferential ring in the region below the label bumper. Krishnakumar is of conventional construction, as has been discussed above, in that it has a circumferential ring (reference number 18) above the upper label bumper. The specification of Krishnakumar further describes, in detail, the relationship between the ring and the outermost circumference of the container. Thus, the ring can not be in the more recessed label panel region. For at least these reasons, the Office Action fails to establish a *prima facie* case of obviousness over Peek in view of Ota and in further view of Krishnakumar. Accordingly, the rejection of claim 18 as obvious under 35 U.S.C. § 103(a) over Peek in view of Ota and in further view of Krishnakumar must be withdrawn.

For all of the reasons above, Applicants respectfully request that the rejections under 35 U.S.C. §§ 103(a) and 112, second paragraph be withdrawn.

CONCLUSION

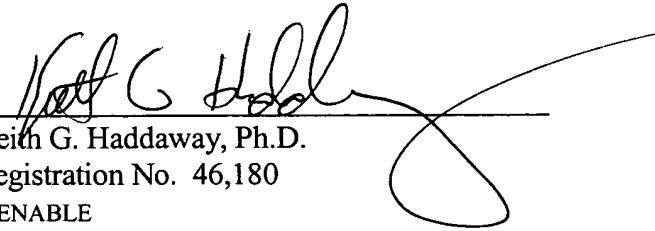
Applicants believe that a full and complete reply has been made to the Office Action. Applicants request that the Examiner reconsider all previously outstanding objections and rejections and that they be withdrawn. Accordingly, Applicants request that the Examiner indicate the Allowability of claims 1-27, and the application pass to issue. Should the Examiner have any questions which might be amenable to a telephone interview, the Examiner is invited to contact undersigned counsel to discuss such issues. If any fee not otherwise provided with papers accompanying this amendment, the Commissioner is authorized to charge our deposit account No. 22-0261, and notify undersigned counsel accordingly.

Prompt and favorable consideration of this amendments and remarks is requested.

Respectfully submitted,

Date: October 12, 2006

::ODMA\PCDOCS\DC2DOCS1\792504\1



Keith G. Haddaway, Ph.D.
Registration No. 46,180
VENABLE

P.O. Box 34385

Washington, D.C. 20043-9998

Telephone: (202) 344-4000

Telefax: (202) 344-8300